Filed 6/3/19 In re H.G. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re H.G., a Person Coming Under the Juvenile Court Law.	B291288 (Los Angeles County Super. Ct. No. 18CCJP03008A)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. K.Y., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Reversed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

K.Y. (mother) appeals from the dependency court's jurisdictional findings under Welfare and Institutions Code section 300, subdivision (b)(1),[1] as well as dispositional orders removing H.G. (child) from mother's custody and requiring mother's participation in services. Mother contends there was inadequate evidence to support the court's findings and orders, and the child was healthy and well-cared for by mother. Respondent Los Angeles County Department of Children and Family Services (Department) contends mother's mental health history, recent suicidal thoughts, lack of treatment, and subsequent statements denying suicidal thoughts provides substantial evidence to support the court's findings and orders.

We conclude there is insufficient evidence to support the court's jurisdictional finding, and so we reverse the judgment.

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

FACTUAL AND PROCEDURAL BACKGROUND

Family background

Mother and father met in 2015. Their relationship ended in November or December 2017. Their child, H.G., was born in January 2018, when mother was 20 years old. By all accounts, mother has taken good care of the child. Maternal great grandmother, maternal great aunt, maternal aunt, father, and paternal grandmother describe mother as being well-bonded with the child and as taking good care of him. Other than a severe case of eczema, his health is good, and his immunizations are up to date.

Detention

On the evening of May 8, 2018, mother presented herself at El Monte Hospital's emergency room. According to the person reporting the matter to the Department, mother arrived with the child and admitted to feeling suicidal. She had been feeling depressed since giving birth and was having recurring thoughts of harming herself. She acknowledged a 2015 attempted suicide by overdose, and indicated she had no family support system. She told the hospital that the child's father resided in Fresno and was not involved. The reporting party stated that mother might be placed on a psychiatric hold, and there was no one to whom

the hospital could release the child. A Department social worker went to the hospital to investigate.

Mother disputed the hospital's version of events. She acknowledged she was concerned about post-partum depression, but claimed she only went to the hospital to get referrals. Mother was still awaiting an evaluation by a psychiatric mobile response team (mobile team) when the social worker arrived at the hospital, and the social worker's questions made mother upset. Mother stated she had moved to El Monte in December 2017. She initially refused to provide the social worker any information about her diagnosis, any medications she was taking, father's contact information, or any information about whom she was residing with in El Monte. Eventually, mother acknowledged having depression in the past and provided father's contact information.

According to the hospital charge nurse, mother had arrived to the hospital and reported suicide ideation[2] to two hospital workers on the day staff. The charge nurse identified the day staff by name and stated mother's statements were documented in the day staff's case notes. The hospital could not provide the medical records to the social worker, but the records could be requested after

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[2] The term "suicide ideation" appears in the Department's reports several times. We understand it to mean suicidal thoughts.

mother was discharged.[3] Mother did not disclose having a plan to kill herself.

Based on the reports of mother's statements of suicidal thoughts and her refusal to provide any mental health history, the Department decided to take the child into protective custody just over three hours after mother first appeared at the hospital. Upon learning of the Department's decision, mother again denied being suicidal and accused the hospital staff of dishonesty. A maternal aunt[4] arrived at the hospital and stated that mother sometimes stayed with her in El Monte during visits, but mother lived in Lancaster and did not live with her in El Monte. The aunt was unaware of any of mother's mental health history, diagnosis, or therapy. She believed mother was fine and only went to the hospital for referrals. The aunt asked about placement, but the Department was concerned about placing the child with the aunt, based on possible dishonesty about where mother was residing, as mother had insisted she lived in El Monte, while the aunt insisted mother lived in Lancaster.

While mother was still awaiting the mobile team, the social worker took the child for a medical exam. The child had eczema, but no marks or bruises. The mobile team

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[3] The record on appeal does not include any hospital records.

[4] A.G. is identified as a maternal aunt in the detention report, but as a maternal great aunt in the jurisdiction and disposition report.

informed the social worker that mother did not meet criteria and would be released from the hospital. Mother also called the social worker, stating she was being released and she wanted her child back. The social worker explained there was concern about the child's safety based on mother's earlier suicidal statements, and mother responded she had not felt suicidal and hospital staff had lied to the social worker.

The social worker spoke with father and two other maternal relatives, all of whom denied that mother was suicidal or had any mental health diagnosis. All three reported that mother took good care of the child. Father stated mother told him she was possibly going through postpartum depression, but only wanted referrals for therapy. Father was in Bakersfield, but asked for the Department to release the child to his family.

The social worker spoke to paternal grandmother, who stated she was aware mother was receiving therapy, but did not know why. Paternal grandmother had seen mother and the child the prior week, and mother appeared fine. Paternal grandmother was willing to care for the child until father returned. The Department decided to release the child to father, with paternal grandmother caring for the child until father returned the next day.

In an interview the following day, father said he knew mother was receiving therapy in Lancaster, but he was unaware of any mental health history or diagnosis. He did not know why mother sought referrals in El Monte, and not

Lancaster. He said mother did tell him yesterday she was having some postpartum depression, but denied having suicidal thoughts. Father had no prior concerns with mother caring for the child, and she was taking good care of the child and permitting father to visit. Father told the social worker mother was calm knowing the child was in his care, and he would contact mother to schedule a monitored visit.

The social worker also spoke to a nurse who had spoken with mother at the hospital, but who was not one of the day staff identified by the charge nurse, nor mother's assigned nurse. According to the nurse, mother reported feeling depressed for the past two weeks, that she was having thoughts of hurting herself, and had no family support. Mother was appropriate with the child and did not report having a plan to kill herself. Mother also reported prior suicide ideation in 2015.

Petition and detention hearing

The Department filed a petition alleging that mother's mental and emotional problems rendered her incapable of providing regular care for the child, placing him at risk of physical harm.[5] At the detention hearing, mother's counsel

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[5] The exact wording of the petition's b-1 allegation was: "[Mother] has mental and emotional problems, including depression and suicidal ideation, which render the mother incapable of providing the child with regular care and supervision. Such mental and emotional problems on the

argued the child should be released to mother based on the existing strong bond between mother and child, the lack of evidence that mother was suicidal, and the ability to put safety measures in place, such as unannounced home visits. Counsel for the child and for father had no objection to either releasing the child to mother or scheduling a child family team (CFT) meeting to create a safety plan. The court ordered mother to sign medical releases and attend a CFT by June 1, 2018. It gave the Department discretion to release the child to mother. It also ordered mother to receive a psychological evaluation and referrals for mental health services, and to take any prescribed medications. In the interim, mother would have monitored visits at father's home. The court also asked mother's counsel to advise mother to bring to the CFT meeting any records or reports from her treating doctor or therapist, to assist with the decision about whether the child could be returned to her custody with a safety plan in place.

Jurisdiction and disposition report

The Department's jurisdiction and disposition report included a summary of prior child welfare referrals from the time mother was herself a minor child between 2007 and 2014, and information on mother's condition, including

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part of the mother endanger the child's physical health and safety and place the child at risk of serious physical harm and damage."

summaries of interviews with family members and extensive excerpts from the detention report.

The reports relating to when mother was a minor child evidence that Mother has suffered from mental health challenges from a young age. In July 2009, when mother was 11 years old, she was hospitalized for self-harm, diagnosed with major depression with psychotic features, and started on psychiatric medications. In September 2010, the Department conducted an investigation after mother made statements about cutting herself and killing herself. The Department closed the matter, finding the referral allegations unfounded because maternal grandmother enrolled mother in mental health services to address the issues. During a 2013 investigation, the reporter mentioned mother attended counseling and expressed being overwhelmed by her responsibilities caring for the other children—likely her siblings—at home. In 2014, the Department investigated allegations that maternal grandmother engaged in excessive physical discipline of mother's five-year-old sibling. The referral was closed as inconclusive. The 2014 investigation report contained information that in January 2014, law enforcement responded to the home and transported mother to the hospital "due to suicidal statements."

In the context of the current case, mother stated that she was diagnosed with major depression after a breakup with an ex-boyfriend approximately four years ago. She saw a therapist from Penny Lane in Lancaster to treat her

depression for two years, with her last session taking place in November 2017, up until she moved from Lancaster to El Monte. In response to questioning, mother summarized what she learned in therapy about coping with stress, communication, coping skills and relationships. Discussing earlier reports of self-harm during her childhood, mother stated she used to be on medication when she was very young, but she felt her medications were contributing to her depressive state. She said the last time she self-harmed was when she was 12 years old.

With respect to mother's recent appearance at the hospital, the hospital nurse who spoke to the social worker at the time of detention was on leave and therefore unavailable for a follow-up interview. A social worker had requested medical records from the hospital on May 8, 2018, and the report stated, "The Department will forward this information to the Court once received." There is no indication in the record that the Department ever received any hospital records, including the notes from the day staff who did mother's initial intake. There is also no evidence in the record that the day staff were ever interviewed.

The CFT meeting with mother took place May 30, 2018. At the meeting, the Department expressed concern that mother's identified support team was not present to participate in the CFT process, as well as concern about mother's history of suicidal statements and self-harming behavior. Mother denied having expressed suicidal thoughts

during her May 8, 2018 hospital visit, and agreed to follow up with the referral to mental health services.

The Department's report included a section entitled "Assessment/Evaluation." That section stated in pertinent part that mother reported to the social worker that the last time she had suicidal ideations and harmed herself was when she was 12 years old, but mother's self-report was contradicted by other reports. "[A]ccording to the mother's Child Welfare History, Law Enforcement had responded to the mother's childhood home on 01/30/2014 when the mother was 16 years old to having to be transported to Antelope Valley Hospital due [to] suicidal statements. More recently, the mother admitted herself to Greater El Monte Hospital and expressed to the hospital staff that . . . she had been feeling suicidal. The mother further stated that since giving birth, she had been feeling depressed and had reoccurring thoughts of harming herself. The mother further expressed to the hospital staff that she had no family support. [¶] The mother . . . is currently not participating in any form of mental health services. Due to the child['s] . . . young and vulnerable age, he would be at high-risk of physical and emotional harm if returned to the care of the mother at this time being. The child is of such a young age and requires constant care and supervision. Further, the mother has not followed up with mental health services as recommended by the [mobile] team that responded on 05/08/2018, and the mother continues to deny that she had expressed suicidal thoughts while the child was in her care and custody."

The Department noted mother had "an extensive history of mental health issues throughout her childhood." During her childhood, mother was diagnosed with major depression and had taken psychotropic medication. Mother identified a maternal aunt, a maternal great aunt, father, and paternal grandmother as her support circle, but the Department noted that "none of her support team were available for the [CFT] meeting to address the mother and child's needs." The report does not specify whether mother was advised to bring anyone from her support circle to the CFT meeting. The report identifies a concern about whether the members of mother's support circle had any awareness of mother's mental health needs, stating, "All of the mother's support circle denied noticing any mental health concerns with the mother . . . and expressed that they do not believe the mother has any mental health issues."

An earlier section of the report reviews similar concerns, but also states "The mother has a support system around her but has admitted to failing to reach out to them when needed." Nothing in the summary of the social worker's interview notes supports this statement.

June 2018 last minute information

A last-minute information report summarized information the social worker obtained during the month of June 2018.

On June 20, 2018, mother reported to the social worker that she was not being treated through Arcadia Mental Health because they would not provide or discuss information with the court. Based on the advice of her attorney, mother wanted to be treated by a provider who would share her progress with the court, but she had not been able to find one. The Black Infant Health Program was the only program mother was participating in. The social worker gave her a referral to a different provider on June 20, 2018.

The social worker also spoke to the woman who facilitates group sessions at the Black Infant Health Program where mother participated in a 10-week program, with group sessions once a week for two and a half hours per session. The program included discussions about mental health and postpartum. Once the group program was complete, mother continued participating through weekly phone calls with the family health advocate, and in-person visits when needed. The social worker reviewed the Department's concerns, and the facilitator stated that nothing had stood out to her about mother's mental health, but mother had not shared any mental health details and did not share what led to the child's detention. A June 14, 2018 letter from the program stated that mother was attentive and engaged during group sessions. The facilitator witnessed mother exercising patience and care with her child and publicly displaying affection towards the child.

Maternal grandmother told the social worker about mother's mental health history, including self-cutting, schizophrenia, and depression. Mother started seeing a therapist when she started self-cutting in sixth grade and was taking medication for depression. Mother continued with therapy through the age of 18, but stopped her medication when she was 16 or 17. Maternal grandmother claimed mother "overcame the schizophrenia," and the last time maternal grandmother heard about schizophrenia was when mother was around 15 or 17.

Jurisdiction and disposition hearing

At the June 21, 2018 jurisdiction and disposition hearing, the court admitted the Department's reports into evidence, as well as mother's exhibit A, the June 14, 2018 letter from the Black Infant Health Program. Father asked the court to enter a custody order. Mother acknowledged she had a history and a past diagnosis of mental health problems, but argued that the child was healthy and well taken care of, and no one in mother's life had any concerns regarding her mental health. Based on the evidence mother had taken good care of the child and attended to all of his health needs, and lack of any evidence that the child was at risk of physical harm, the Department had not met its burden of proving by a preponderance of the evidence that mother's emotional problems rendered her incapable of providing regular care and supervision. If the court was

inclined to find jurisdiction, mother requested the child to be released to her because the Department had not shown clear and convincing evidence that removal was required. And if the court chose not to release the child, mother objected to terminating jurisdiction with a custody order.

The court asked the Department to address current risk and whether there was clear and convincing evidence of harm to the child, specifically focusing on the portion of the Department's report stating that the mobile team told the social worker that mother did not meet criteria and would be released from the hospital, and that the social worker was informed mother only went to the hospital asking for referrals and at no time disclosed any suicidal ideation. The Department argued that mother had disclosed suicidal ideations to at least three mandated reporters working for the hospital. When the court pointed out the inconsistency between the reported statements to mandated reporters and the conclusions of the mobile team, the Department argued mother limited the information she provided to the mobile team, knowing that her child was likely to be removed from her. The Department emphasized mother's lengthy mental health history, and that she was not currently seeing a therapist or on medication.

The Department inaccurately[6] stated that as part of the order directing mother to attend a CFT, the court "said

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[6] The reporter's transcript of the detention hearing does not include any direction by the court about who should attend the CFT with mother.

that she should have her care group . . . show up to the CFT." Based on that representation, the Department argued that it was a matter of concern and something for the court to consider that mother attended the CFT alone.

The court asked mother's counsel if mother was currently taking any kind of psychotropic medication. Counsel said no, and explained that mother was in the process of getting a new mental health assessment,[7] and that mother was willing to follow up with the assessment and take prescribed medication if necessary or recommended.

The court sustained the petition allegations, found clear and convincing evidence that returning the child to mother's custody would create a substantial risk to the child, and ordered that the child would remain with father. Mother filed a notice of appeal on July 11, 2018.

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[7] Inconsistent with the information from the Department's last minute information, mother's counsel stated that mother was trying to follow up with Arcadia Mental Health. Mother previously told the Department that she was not getting treatment with Arcadia Mental Health, and her attorney had advised her to seek treatment with a provider that was willing to share information with the court.

Post-appeal proceedings

In January 2019, the dependency court terminated jurisdiction and granted custody of the child to father, with monitored visitation for mother. Mother has filed separate notices of appeal challenging the termination and custody orders. On February 25, 2019, mother asked this court to take judicial notice of orders and notices of appeal filed in the trial court while the current appeal was underway. We granted mother's request for judicial notice, and invited all parties to submit letter briefs addressing whether mother's current appeal was moot. The Department took no position, and mother argued the current appeal was not moot because any decision to dismiss the current appeal as moot would operate as an affirmance of the underlying orders, and any error in the court's decision to exercise jurisdiction would have adverse collateral consequences if allowed to stand. (Mother's letter brief, filed March 11, 2019.) We agree that mother's appeal is not moot because the child remains outside of mother's custody. (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547–1549.)

DISCUSSION

Mother contends the court's jurisdictional findings under section 300, subdivision (b)(1), are unfounded. She also contends the court's dispositional orders removing the

child from her custody and requiring monitored visits and participation in services were not supported by the evidence and were an abuse of discretion. The Department argues that there was sufficient evidence to support the court's order sustaining the petition and removing the child from mother's custody, in part because the child's young age supports a presumption that he was at risk of physical harm, based on mother's inability to provide adequate supervision and care.

"[W]e review both the jurisdictional and dispositional orders for substantial evidence. [Citation.] In doing so, we view the record in the light most favorable to the juvenile court's determinations, drawing all reasonable inferences from the evidence to support the juvenile court's findings and orders. Issues of fact and credibility are the province of the juvenile court and we neither reweigh the evidence nor exercise our independent judgment. [Citation.] But substantial evidence 'is not synonymous with any evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] . . . "The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record." [Citation.]' [Citation.]" (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992.) Substantial evidence can be based on inferences that are grounded in logic and reason, but not speculation or conjecture alone. (*Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 420; *In re Donovan L.* (2016) 244 Cal.App.4th 1075, 1093; *In re James R.* (2009)

176 Cal.App.4th 129, 135 (*James R.)*.) To obtain reversal, the appealing party must show there is no evidence of a sufficiently substantial nature to support the findings or order. (*In re D.C.* (2015) 243 Cal.App.4th 41, 52.)

Jurisdiction under section 300, subdivision (b)(1), is warranted if there is a preponderance of the evidence that "'[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child,' the willful or negligent failure of the parent to provide the child with adequate food, clothing, shelter, or medical treatment, or the inability of the parent to provide regular care for the minor due to the parent's mental illness, developmental disability or substance abuse. (§ 300, subd. (b)(1).)" (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 560–561 (*Joaquin C.*).) A substantial risk of serious physical harm can be established by proof of an "identified, specific hazard in the child's environment," or by the failure to rebut the presumption that the "absence of adequate supervision and care poses an inherent risk to their physical health and safety" of a child of "tender years." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, italics omitted; see also *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219 [substance abuse is prima facie evidence of substantial risk of harm based on a parent's inability to provide care].)

Section 300, subdivision (b)(1), does not require neglectful or blameworthy conduct by a parent, only an

actual inability to provide the necessary supervision or protection. (*In re R.T.* (2017) 3 Cal.5th 622, 624, 626–630.) Nothing in *In re R.T.* alters or eliminates the requirement that the Department must prove that the parent was unable to provide adequate care and supervision to the child. (*Joaquin C., supra*, 15 Cal.App.5th at p. 561.) The Department must demonstrate the following three elements: "(1) one or more of the statutorily specified omissions in providing care for the child (inability to protect or supervise the child, the failure of the parent to provide the child with adequate food, clothing, shelter, or medical treatment, or inability to provide regular care for the child due to mental illness, developmental disability or substance abuse); (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial risk' of such harm or illness. [Citations.]" (*Ibid.*)

"Although 'the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm' [citation], the court may nevertheless consider past events when determining whether a child presently needs the juvenile court's protection. [Citations.] A parent's past conduct is a good predictor of future behavior." (*In re T.V.* (2013) 217 Cal.App.4th 126, 133.) "To establish a defined risk of harm at the time of the hearing, there 'must be some reason beyond mere speculation to believe the alleged conduct will recur. [Citation.]' [Citation.]" (*In re D.L.* (2018) 22 Cal.App.5th 1142, 1146; see *In re Kadence P.* (2015) 241

Cal.App.4th 1376, 1383–1384, quoting *In re S.O.* (2002) 103 Cal.App.4th 453, 461 ["[a] parent's "'[p]ast conduct may be probative of current conditions" if there is reason to believe that the conduct will continue"'].)

As courts have held in numerous cases, a parent's mental illness alone is insufficient as a basis for dependency jurisdiction under section 300, subdivision (b)(1). (*Joaquin C., supra*, 15 Cal.App.5th at p. 563 ["mental illness is not itself a justification for exercising dependency jurisdiction over a child"]; *In re James R.*, *supra,* 176 Cal.App.4th at p. 136 [mental illness does not create a presumption of harm, and agency bears the burden of demonstrating how minors have been harmed or are at risk of harm]; *In re David M.* (2005) 134 Cal.App.4th 822, 829–830 [finding no evidence of a specific, defined risk of harm to infant and toddler resulting from parents' mental illness].)

In *Joaquin C.*, there was substantial evidence the mother suffered from significant mental illness and had mixed compliance with treatment at the time of the jurisdictional hearing, but the appellate court reversed the jurisdictional findings based on the inadequacy of any evidence that mother's mental illness placed the minor at any risk of harm. (*Joaquin C., supra*, 15 Cal.App.5th at pp. 564–565.) The mother was paranoid and delusional at times, but whatever mental problems mother had, "there was no evidence that they impacted her ability to provide adequate care for her son." (15 Cal.App.5th at p. 563, fn. omitted.) During multiple visits by social workers, the

infant was observed to be happy, well groomed, and strongly bonded with mother, and the home and mother's room were clean and organized, with sufficient food. The Department had "provided ample evidence of [mother's] mental illness, but it did not prove that her condition rendered her unable to adequately supervise, protect, or provide regular care for her son." (*Id.* at p. 564.) The trial court in *Joaquin C.* relied on mother's willingness to engage in services and her agreement that treatment was needed as evidence to support its exercise of jurisdiction. The appellate court disagreed, reasoning that mother's willingness to participate in mental health services did not constitute evidence of risk that she could not provide safe and adequate care for her child. The appellate court noted: "From the record before us [mother's] willingness to accept mental health services did not include an acknowledgment that she was a risk to [the child] or that she was unable to provide care for him. Throughout the dependency proceeding she maintained that she was providing excellent care to her son. We caution against treating a parent's willingness to accept services as evidence or an admission that the parent cannot provide adequate supervision, protection, and care. Such a practice would compel parents to refuse all family preservation services or risk being deemed to have conceded dependency jurisdiction over their children, an outcome antithetical to the purpose of providing these services." (*Ibid.*)

The Department argues the facts of the current case are similar to those at issue in *In re Travis C.*, where the

mother suffered from serious mental health problems and did not consistently follow any treatment regimen, and the appellate court affirmed a finding of jurisdiction over the children based on the risks posed by mother's untreated condition. (*In re Travis C.* (2017) 13 Cal.App.5th 1219, 1226 (*Travis C.*).) The facts of *Travis C.* included evidence of risk that is absent in the case currently before us. In *Travis C.*, mother suffered from delusions, where she believed the children were being manipulated by the government and that law enforcement was following her. Mother lived with maternal grandparents, who were able to intervene to care for the children, and even removed the children from the home when mother threatened suicide. Nevertheless, mother threatened to move out of the grandparents' home, and she would drive alone with the children in the car while experiencing symptoms of her mental illness. (*Id.* at pp. 1221–1222.) There was evidence that mother had experienced psychotic episodes where she heard voices and believed she was being stalked. Mother's treating psychiatrist expressed concern about the children's safety if mother was off her medications. Mother argued that jurisdiction was not warranted because any risk of harm to the children was speculative. The appellate court rejected mother's argument, noting that where there was evidence that mother's illness and her failure to take medication had already placed the children at risk of harm, the social service agency's "inability to precisely predict how Mother's illness

will harm [the children] does not defeat jurisdiction." (*Id.* at p. 1226.)

Here, in contrast, the Department did not provide any evidence of behavior or actions by mother that had placed the child at risk of harm. The fact that she went to a hospital when she was feeling depressed is evidence of protective behavior, not harmful behavior. (See, e.g., *Joaquin C.*, *supra*, 15 Cal.App.5th at p. 564 [a parent's willingness to engage in mental health services does not constitute evidence of risk of harm to the child].) The only evidence in the record that mother was unable to supervise or care for her child was mother's apparent statement to the two members of the day staff who were never interviewed by the Department, that mother was feeling suicidal and had no family support. The Department's initial decision to take custody of the child, understandable given the circumstances, was made on the available information within a few hours of mother arriving at the hospital. However, shortly after that decision on the same evening mother was reported to have made the concerning statements, the mobile team determined mother did not need to be hospitalized, multiple family members made themselves available to care for the child, and no witnesses—including hospital staff—expressed any doubts about mother's ability to bond with and care for the child.

On the facts before us, we find the evidence of possible risk to the child to be even weaker than that at issue in *James R., supra*, 176 Cal.App.4th at pp. 131–134, where the

appellate court reversed a jurisdictional finding, even though there was evidence mother had prior suicide attempts, and mother admitted to having postpartum depression and five or six prior mental health hospitalizations. The mother in *James R.* had three children, ages one, three, and four, and was hospitalized after taking eight ibuprofen and drinking a few beers. Mother denied she was trying to harm herself, explaining it was a mistake to mix the ibuprofen and the alcohol. (176 Cal.App.4th at pp. 131–133.) Although mother had started participating in services such as Alcoholics Anonymous and individual counseling, the social worker believed the children were still at risk because mother continued to drink and did not comply with hospital recommendations. (*Id.* at pp. 132–134.) A psychologist who had seen the mother for 11 sessions diagnosed her as having attention deficit disorder, which caused her to have a chaotic home life, but did not pose a risk to her children or herself. (*Id.* at p. 133.) The appellate court in *James R.* concluded the agency had not met its burden to show that mother's mental illness established a risk of harm to the children, stating, "Any causal link between [mother's] mental state and future harm to the minors was speculative." (*Id.* at p. 136.) The court did note that after the children were born, there was no evidence of suicidal ideation or a determination that mother was a danger to herself or others. While the social services agency had identified potential harms if mother did not follow through with treatment, those possibilities were "insufficient to support a finding the

minors were at substantial risk of future harm." (*Id.* at p. 136.)

In the current case, mother went to the hospital because she was depressed, and at most she told hospital staff she was having self-harming or suicidal thoughts and had no family support. Conceding that the hospital was correctly concerned enough about mother's mental health to call the Department and a mobile team, once that team did their examination, there was no evidence that mother had a plan to harm herself, and the mobile team ultimately determined that mother did not require hospitalization. The Department's reports expressed concern about untruthfulness by mother and maternal relatives about mother's mental health history and whether she lived in Lancaster or El Monte. Mother initially refused to discuss her mental health history with the Department, but there is no evidence she denied having such a history, and in fact, she told the hospital she had suicidal thoughts in 2015. The fact that mother presented herself to the hospital when she was feeling depressed cannot be used as evidence of risk. Even though she arrived on her own and there is evidence—however thin—that mother claimed she lacked any family support, the reality during the Department's investigation proved otherwise. One maternal aunt arrived before the mobile team, and the social worker was able to speak with father, two maternal relatives and paternal grandmother the same evening. Even if the court found mother had lied and her family members knowingly minimized her past mental

health struggles, the Department has not produced meaningful evidence to show how mother's mental illness, or her responses to the Department's investigation, placed her child at risk of any harm. (*In re A.L.* (2017) 18 Cal.App.5th 1044, 1050 ["Although there is no question that Mother has mental health issues, the law is settled that harm may not be presumed from the mere fact of a parent's mental illness"]; *Joaquin C., supra* 15 Cal.App.5th at pp. 563–564 ["The existence of a mental illness is not itself a justification for exercising dependency jurisdiction over a child"].) All relatives were uniform in their praise of mother's care for the child. We conclude the court's jurisdictional finding is not supported by substantial evidence.

We also reject the Department's argument that the child's young age warranted a presumption of risk based on evidence that mother was unable to provide adequate supervision and care. By all reports, the child was healthy and well-cared for. The only evidence that could arguably show substantial risk of harm was mother's mental health history, her statements to hospital staff that she had no family support, and the absence of any family members at the Department's CFT meeting. As explained above, mother's mental health history and even her recent statements about postpartum depression and suicidal thoughts are not sufficient to support a jurisdictional finding. (See *In re Quentin H.* (2014) 230 Cal.App.4th 608, 616–617 [information in the Department's evidence can rebut a statutory presumption that a child is at risk of

harm].) The absence of any family members at the CFT meeting cannot form the basis for the jurisdictional findings because there is no evidence the court or the Department asked mother to bring any family members to the meeting. (*Ante*, fn. 6.)

Without minimizing the serious nature of statements expressing suicidal thoughts and a history of depression, under the circumstances presented in the record, the potential risks and dangers expressed by the Department do not satisfy the requirements for jurisdiction under section 300, subdivision (b)(1). Absent any evidence of how mother's mental health history placed the child at risk of harm, the court erred in sustaining the petition allegation. The insufficiency of evidence in support of the court's jurisdictional finding also requires us to reverse the court's removal order and all subsequent order. (*Joaquin C.*, *supra*, 15 Cal.App.5th at p. 565; *In re Isabella F.* (2014) 226 Cal.App.4th 128, 141.)

DISPOSITION

The jurisdiction findings and disposition order are reversed, and the case is remanded with directions to hold a hearing for the purpose of vacating all subsequent orders and dismissing the petition.

MOOR, J.

We concur:

BAKER, Acting P. J.

KIM, J.